

Opinion No. [29-78]

January 11, 1929

TO: Office of the Attorney General of New Mexico

SCHOOLS -- Qualification for signing petition for bond election. Holding bond election on holidays.

Time of bond election in relation to general election.

OPINION

Referring to the letter of Donald MacKay, Superintendent of Schools of Raton, New Mexico, which you have submitted to this office for an opinion, I would say that the first question therein would seem to be in substance whether the wife of a man who owned an automobile and has paid tax thereon could properly sign a petition asking for a bond election to be called by the board of education.

This, we think, is definitely answered by the case of *Baca v. Village of Belen et al*, 30 N.M. 541, as our Supreme Court therein holds:

"A married woman, being otherwise a qualified elector, owning with her husband community property in the village of Belen, whose husband had paid the tax assessed against such community property during the year preceding the election to authorize the issuance of the village bonds to procure funds for the construction of a sewer system for such village, was qualified to vote upon the question of the issuance of such bonds; she thereby having paid a property tax within the contemplation of the provision of section 12, Art. 9, New Mexico Constitution."

Thus it will be seen that the tax on community property although actually paid by the husband yet in legal effect it was also paid for and on behalf of the wife.

This, however, is upon the assumption that the automobile was community property, and not the individual property of the husband. Of course, if the automobile was the separate property of the husband and they had not paid a tax on any other community property, then the wife would be excluded from the right to sign such petition.

Second. The next question seems to be whether or not the election for school board members held on a holiday would be a legal election.

As to this we would advise that in the case of *Pickering v. Current*, 16 N.M. 37, our Supreme Court has said:

"There is a statute in this Territory providing that certain days shall be holidays for commercial purposes, * * * but none prohibiting judicial proceedings on such days. In

the absence of such statutory provisions, judicial acts on holidays, including judgments, are valid."

In the light of this interpretation, and finding upon examination that there are no statutory provisions against holding elections on holidays, it, therefore, appears that the holding of the election mentioned on a holiday would not be an illegal election.

Third. The third matter mentioned is in reference to the time of the bond election in relation to a regular election.

As to this I would say that under § 703 of the School Code, page 303 of the Laws of New Mexico of 1923, provision is made for an order providing that such an election be held in said district at a designated time, which shall be not less than thirty nor more than fifty days after the time of the finding that it should be called, but in no event shall any such election be held on or within five days preceding or succeeding any general election held in the county.

We are assuming in this statement that in his question Mr. MacKay refers to a general election when he says a regular election.